

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

RODNEY MARTEL)	
Claimant)	
VS.)	
)	Docket No. 222,516
WASTE MANAGEMENT OF WICHITA)	
Respondent)	
AND)	
)	
CONTINENTAL CASUALTY COMPANY)	
Insurance Carrier)	

ORDER

Respondent and its insurance carrier requested Appeals Board review of an Order entered by Administrative Law Judge Nelsonna Potts Barnes on May 1, 1997, that granted claimant's request for preliminary benefits.

ISSUES

The issue before the Appeals Board is whether the Administrative Law Judge exceeded her jurisdiction when she granted preliminary benefits to claimant at the May 1, 1997, preliminary hearing, where claimant failed to give notice of hearing to respondent's insurance carrier.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the hearing record and considering the briefs of the parties, the Appeals Board finds as follows:

The preliminary hearing that took place on May 1, 1997, was held without the respondent or its insurance carrier being present. Following that hearing, the

Administrative Law Judge entered the preliminary hearing Order dated May 1, 1997, that granted claimant's request for preliminary hearing benefits.

K.A.R. 51-3-5a provides:

"In no case shall the administrative law judge entertain an application for preliminary hearing when written notice has not been given to the **respondent** pursuant to K.S.A. 44-534a." (Emphasis added.)

The insurance carrier argues it did not receive notice of the preliminary hearing held on May 1, 1997, as required by K.S.A. 1996 Supp. 44-534a(a)(1) which provides in pertinent part as follows:

"The director shall assign the application to an administrative law judge who shall set the matter for a preliminary hearing and **shall** give at least seven days' written notice by mail to the parties of the date set for such hearing." (Emphasis added.)

The claimant's attorney entered into evidence at the May 1, 1997, preliminary hearing a copy of the Notice of Preliminary Hearing that he sent to only respondent and not to respondent's insurance carrier. The notice specified the time and place of the preliminary hearing.

Contained in both the transcript of preliminary hearing proceedings held on May 1, 1997, and the Administrative Law Judge's Order is a finding that proper notice of the preliminary hearing was given to the respondent when the claimant sent notice to the respondent and not to respondent's insurance carrier. The Appeals Board finds that Continental Casualty Company was the insurance carrier providing workers compensation coverage for the respondent on the alleged date of accident.

In Landes v. Smith, 189 Kan. 229, 235, 368 P.2d 302 (1962), one issue the Court faced was whether an insurance carrier who did not receive notice of a hearing and therefore was not present was bound by the judgment entered in the proceedings. Unfortunately the Court ultimately determined the question raised concerning the propriety of notice given to the insurance carrier was moot and need not be considered. However, before coming to that conclusion, the Court did go into a lengthy discussion of notice requirements as they relate to insurance carriers.

The Court noted K.S.A. 40-2212, which states in part:

"Every policy issued by any insurance corporation . . . to assure the payment of compensation, under the workmen's compensation act, shall contain a clause providing that between any employer and the insurer, notice to and knowledge of the occurrence of injury or death on the part of the insured

shall be notice and knowledge on the part of the insurer; and jurisdiction of the insured shall be jurisdiction of the insurer and the insurer shall be bound by every agreement, adjudgment, award, or judgement rendered against the insured.”

The Court in Landes stated: “This statute definitely provides that ‘jurisdiction of the insured (employer) is jurisdiction of the insurer.’ Jurisdiction over the person implies notice. Therefore, notice to the employer of the hearing is notice to the insurance carrier.” Id at 235. Separate notice to the insurance carrier is not required in Kansas.

The Appeals Board concludes sufficient notice was given to the respondent’s insurance carrier of the May 1, 1997, preliminary hearing by serving respondent with the notice of time and place of the preliminary hearing.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Order by Administrative Law Judge Nelsonna Potts Barnes dated May 1, 1997, should be, and is hereby, affirmed in all respects.

IT IS SO ORDERED.

Dated this ____ day of July 1997.

BOARD MEMBER

c: Steven R. Wilson, Wichita, KS
John David Jurcyk, Lenexa, KS
Nelsonna Potts Barnes, Administrative Law Judge
Philip S. Harness, Director